

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK DOWNEY,
ESTATE OF VIRGINIA DOWNEY,

OPINION AND ORDER

Plaintiffs,
v.

Case No. 19-cv-596-wmc

UNITED STATES and
DOJ,

Defendants.

Under the False Claims Act and the Dodd Frank Act, *pro se* plaintiffs Mark Downey and the Estate of Virginia Downey filed this proposed civil lawsuit against the United States of America and the United States Department of Justice for claims of federal mispending. Plaintiffs are purporting to bring both a *qui tam* action and seek relief under 42 U.S.C. § 1983, as well as various other federal statutes. As plaintiffs are seeking leave to proceed *in forma pauperis*, the court must screen the complaint pursuant to 28 U.S.C. § 1915(e)(2), and dismiss any portion that is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who by law cannot be sued for money damages. Even construing plaintiffs' complaint generously and in their favor, *see Haines v. Kerner*, 404 U.S. 519, 521 (1972), the claims outlined in this lawsuit must be dismissed as both frivolous and malicious.

OPINION

In the 66-page complaint, plaintiffs claim the federal government has been attempting to balance the federal budget deficit through overspending, allowing federal workers to avoid paying taxes, refusing to accommodate disabled persons, violating criminal statutes related to the destruction of property and records, and conspiring to defraud the United States. The complaint outlines an array of unrelated claims that appear to be loosely connected to Downey's employment with the federal government, invoking a variety of federal civil and criminal statutes.

This complaint is very similar to other complaints Downey has filed throughout the country, which have been dismissed as frivolous and for failure to state a claim. *See Downey v. United States*, No. 1:19-cv-11414-RGS, dkt. #6 (D. Mass. June 28, 2019) (dismissing action for failure to state a claim under Federal Rule of Civil Procedure 8), *appeal filed*, *Downey v. United States*, No. 19-1802 (1st Cir. Aug. 5, 2019); *Downey v. United States*, No. 6:19-cv-6480-CJS, dkt. #4 (W.D.N.Y. July 10, 2019) (dismissing as frivolous and for failure to state a claim); *Downey v. United States of America*, No. PX-19-1872, 2019 WL 2921788 (D. Md. July 8, 2019) (same); *Downey v. United States*, No. 1:19-cv-7143-CM, dkt. #4 (S.D.N.Y. Aug. 5, 2019) (dismissing complaint for failure to state a claim and as frivolous); *Downey v. United States*, No. 1:19-cv-5985, dkt. #5 (S.D.N.Y. Aug. 5, 2019) (same); *Downey v. United States*, No. 1:19-cv-6646, dkt. #4 (S.D.N.Y. Aug. 5, 2019) (same).

Specifically, these courts have all concluded that Downey's *qui tam* claims lack any arguable merit, since *pro se* litigants lack statutory standing to bring *qui tam* claims and his

other claims are frivolous on their face.¹ This lawsuit is yet another example of an attempt at pursuing relief that is not available. Accordingly, this lawsuit will be dismissed as both frivolous and malicious.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for leave to proceed *in forma pauperis* (dkt. #5) is DENIED.
2. The proposed complaint is DISMISSED as frivolous and malicious for purposes of 28 U.S.C. § 1915(e)(2).

Entered this 5th day of March, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

¹ The court notes that the Eastern District of Virginia and the Southern District of New York both have barred Downey from filing new actions without obtaining permission from those courts. *See Downey*, No. 1:19-cv-7143-CM, dkt. #7; *Downey v. United States*, No. 19-cv-233 (E.D. Va. Mar. 26, 2019). This is plaintiffs' first lawsuit in this court, so no filing bar will be imposed at this point. However, Downey should consider this a warning that the continued pursuit of frivolous lawsuits may result in institution of a similar filing bar in this court.